

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

MARC VEASEY, ET AL.,	)	CASE NO: 2:13-CV-00193
	)	
Plaintiffs,	)	CIVIL
	)	
vs.	)	Corpus Christi, Texas
	)	
RICK PERRY, ET AL.,	)	Thursday, May 1, 2014
	)	
Defendants.	)	(3:58 p.m. to 4:41 p.m.)

CIVIL MOTION HEARING

BEFORE THE HONORABLE NELVA GONZALES RAMOS,  
UNITED STATES DISTRICT JUDGE

Appearances:	See Next Page
Court Recorder:	Genay Rogan
Clerk:	Brandy Cortez
Transcriber:	Exceptional Reporting Services, Inc. P.O. Box 18668 Corpus Christi, TX 78480-8668 361 949-2988

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Also present:

BEN DONNELL

1           **Corpus Christi, Texas; Thursday, May 1, 2014; 3:58 p.m.**

2           **THE CLERK:** Good afternoon. This is Brandy with  
3 Judge Ramos's court. Do I have Mr. Dunn or Mr. Derfner on the  
4 line for the individuals and LULAC and Veasey?

5           **MR. DUNN:** This is Chad Dunn, good afternoon.

6           **THE CLERK:** Mr. Dunn, I can barely hear you.

7           **MR. DUNN:** This is Chad Dunn, good afternoon.

8           **THE CLERK:** Thank you, Mr. Dunn. And then for the  
9 United States, do I have Mr. Freeman or Mr. Westfall, or who  
10 will be speaking for the U. S.?

11           **MR. FREEMAN:** Good afternoon. This is Dan Freeman.  
12 I'll be speaking on behalf of the United States. And  
13 Ms. Westfall is also on the line.

14           **THE CLERK:** Thank you, Mr. Freeman. And then for the  
15 Mexican American Legislative Caucus, do I have Mr. Rosenberg?

16           **MR. ROSENBERG:** Yes, I'm here. Thank you.

17           **THE CLERK:** Thank you, Mr. Rosenberg. And then for  
18 Ortiz, et al., do I have Mr. Garza or Mr. Doggett or Ms. van  
19 Dalen?

20           **MR. DOGETT:** Yes, Robert Doggett is here. I don't  
21 believe Jose Garza can make it.

22           **THE COURT:** Okay, thank you. And then for the Texas  
23 League of Young Voters, Mr. Haygood or Ms. Korgaonkar?

24           **MR. HAYGOOD:** (Indiscernible) for the Texas League.  
25 Also joined by my colleague Sonya Lebsack.

1           **THE CLERK:** Sonya Lebsack?

2           **MR. HAYGOOD:** Yes, ma'am.

3           **THE CLERK:** Okay. And then for the Texas Association  
4 of Hispanic County Judges and Commissioners, Mr. Rios or  
5 Mr. Henrichson?

6           **MR. RIOS:** This is Rolando Rios.

7           **THE CLERK:** Thank you, Mr. Rios. And then for the  
8 State of Texas, Mr. Scott, Mr. Clay, Ms. Roscetti?

9           **MR. CLAY:** This is Reed Clay.

10          **THE CLERK:** Thank you, Mr. Clay. And then we also  
11 have Mr. Donnell present in the courtroom. Your Honor, that's  
12 a representative from each party.

13          **THE COURT:** Okay. So we're ready to proceed?

14          **THE CLERK:** Yes, your Honor.

15                           **(Call to order)**

16          **THE COURT:** The Court calls Cause Number 2:13-cv-193,  
17 *Veasey, et al., versus Perry, et al.* And we've already taken  
18 roll. So what's before the Court is the Defendants' motion to  
19 quash the subpoenas of the current and former legislators.  
20 Mr. Clay, are you going to proceed on that?

21          **MR. CLAY:** Actually, your Honor, Arthur D'Andrea from  
22 the Attorney General's Office is representing the non-party  
23 legislators --

24          **THE COURT:** Okay.

25          **MR. CLAY:** -- who have filed the motion to quash, so

1 he will be presenting their arguments.

2 **THE COURT:** Okay. You can proceed.

3 **MR. D'ANDREA:** Good afternoon, your Honor. This is  
4 Arthur D'Andrea for the third party legislators. DOJ has in  
5 its possession every SB 14-related document from every  
6 legislator who mattered in crafting the voter ID law. They  
7 have all the documents from the Governor, the Lieutenant  
8 Governor, the Speaker of the House, former Speaker Craddick,  
9 the bill offered in the Senate, the bill sponsor in the House,  
10 every single member of a relevant House committee, and every  
11 other legislature in the House and Senate who played any role  
12 whatsoever crafting the voter ID law. These official subpoenas  
13 are an unnecessary intrusion aimed at members who are on the  
14 sidelines for voter ID. None of the legislators authored the  
15 amendment; and, in fact, only one of them, Representative Jose  
16 Aliseda, even spoke on the bill.

17 I'd like to offer the Court a few quick examples to  
18 highlight the expansiveness of these subpoenas. First, DOJ is  
19 demanding legislative communications from Dr. Greg Bonnen. He  
20 was a freshman in 2013, two years after voter ID passed. While  
21 voter ID was being debated, he was performing brain surgery  
22 down in Friendswood (phonetic).

23 Next they're asking for documents of Robert Hall  
24 (phonetic). He retires from the legislature in 2007, four  
25 years before voter ID passed. Even if the DOJ found something

1 in his files, the documents would have no relevance because it  
2 would shed no light on the purpose of different legislators in  
3 a different legislative session.

4 They're also asking for documents from Joe Crab, who  
5 also retired before voter ID passed in 2010.

6 They're asking for documents from Brandon Creighton  
7 and Glenn Hegar. Neither had any role in passing voter ID. In  
8 fact, I have no idea why they have any interest in these  
9 legislators. My best guess is because they were joint authors  
10 of a fresh water supply district bill that received no  
11 opposition and all of the legislature later on (indiscernible)

12 The first factor of this Court's balancing test is  
13 relevance, and these documents have none. More importantly,  
14 the second factor is the availability of other evidence.  
15 Plaintiffs have listed reasons why they'd like to have the  
16 documents, but they've given this Court no reason why the  
17 documents are absolutely necessary. In *Hall versus Louisiana*,  
18 the district court quashed the Rule 45 subpoena based on the  
19 second factor. And because the Department of Justice has  
20 thousands of pages of documents already, we urge the Court to  
21 do the same. If the Court places no limits on DOJ's demands,  
22 this (indiscernible) type discovery will only continue.

23 Even --

24 **MR. HENRICHSON:** Your Honor, excuse me. I meant not  
25 to interrupt counsel. This is Preston Henrichson for Hidalgo

1 County, and I apologize for the interruption, counsel.

2 **THE COURT:** All right, thank you.

3 **MR. D'ANDREA:** No problem at all.

4 Even if the Court does not quash the subpoenas, it  
5 should heavily modify them. Not only do the subpoena demand  
6 documents from sideline legislators, they request documents  
7 wholly unrelated to SB 14. First, the request includes topics  
8 like immigration, on which there are countless bills every  
9 session dealing with routine coordination between state and  
10 federal authorities.

11 Second, the request dates all the way back to 2003,  
12 eight years before the passage of SB 14.

13 And third, the request demands documents from  
14 campaign offices seeking documents that were created in some  
15 instances before the legislature even took the oath of office  
16 (indiscernible)

17 We have one final concern, your Honor. I'm not sure  
18 the scheduling order even if amended can accommodate the  
19 expansiveness --

20 **THE COURT:** I'm sorry. We're getting some static  
21 here or something --

22 **MR. D'ANDREA:** All right.

23 **THE COURT:** -- interference. So let -- can you try  
24 again? You were starting with the scheduling order.

25 **MR. D'ANDREA:** I -- yes, your Honor. Thank you. I'm



1 not sure the scheduling order, even if amended, can accommodate  
2 the expansiveness of these requests. DOJ has issued waves of  
3 similar subpoenas around the state in other courts demanding  
4 documents from dozens of additional legislators. We are  
5 working long hours to get the documents, but legislators don't  
6 stay in their offices when the legislature is not in session.  
7 They're at home in Amarillo and Longview and El Paso. Some  
8 legislators shut down their capitol offices entirely, and some  
9 of them have only part-time staff who show up once a week to  
10 check mail. It takes a long time to get a decade's worth of  
11 documents from legislators scattered throughout the state. And  
12 because the Attorney General's Office is acting as a  
13 clearinghouse for these documents, it takes us a long time to  
14 gather, upload, and review them. If DOJ wanted to subpoena all  
15 these documents, I don't understand while they waited until  
16 five months into the discovery (indiscernible)

17 **THE COURT:** Okay.

18 **MR. D'ANDREA:** Thank you, your Honor.

19 **THE COURT:** Mr. Freeman, are you going to take the  
20 lead for the United States?

21 **MR. FREEMAN:** Yes, your Honor. Thank you for the  
22 opportunity to speak.

23 **THE COURT:** Okay. Can I just ask --

24 **MR. FREEMAN:** Your Honor --

25 **THE COURT:** -- are you on a landline?

1           **MR. FREEMAN:** I am, your Honor.

2           **THE COURT:** You sound -- we're getting a lot of --

3           **MR. FREEMAN:** I'm hearing myself and a delay.

4           **THE COURT:** And we're getting a lot of echo from you.  
5 It's hard to understand. So what did you say? You're on the --  
6 -- you are on a landline. You're not --

7           **MR. FREEMAN:** I am on a landline, your Honor. I'm at  
8 on my office --

9           **THE COURT:** Okay. Are you on speaker?

10          **MR. FREEMAN:** I'm not, your Honor.

11          **THE COURT:** You have a --

12          **MR. FREEMAN:** I don't know if there's an issue with  
13 the conference line, but I am hearing myself back at myself  
14 after about a few seconds delay.

15          **THE COURT:** Yeah, exactly. And it's -- yeah, it's  
16 giving us -- we're having problems. Yeah. You want to try  
17 calling back?

18          **UNIDENTIFIED MALE:** I was going to say, Dan, maybe  
19 you could just try hanging up and calling in again --

20          **THE COURT:** Yeah.

21          **UNIDENTIFIED MALE:** -- if there's time for that.

22          **THE COURT:** Right. Why don't we do that?

23          **MR. FREEMAN:** Your Honor --

24          **THE COURT:** Go ahead and hang up and then call back  
25 in, and we'll just be on standby.

1           **MR. FREEMAN:** Thank you so much, your Honor. I'll  
2 call back in just one second.

3           **THE COURT:** Okay.

4           **MR. DUNN:** This is Chad Dunn, your Honor. If I could  
5 intrude, I could recommend to the others on the call that if  
6 they're not speaking, to leave their lines (indiscernible)

7           **(Judge/Clerk confer)**

8           **(Pause)**

9           **MR. FREEMAN:** Dan Freeman.

10          **THE COURT:** Yeah. You're still -- we're still  
11 hearing an echo.

12          **MR. FREEMAN:** I can try calling from a cell phone,  
13 your Honor, or calling from someone else's office in my office.  
14 I apologize. I don't understand why this is happening.

15          **THE COURT:** Can you try another office maybe?  
16 Because we won't -- they won't be able to --

17          **MR. FREEMAN:** I can just find another office,  
18 although another attorney from my office has told me that they  
19 were hearing the same echo. I'm happy to try, and I'll call --  
20 or I'll just pick up the phone in someone else's office, your  
21 Honor --

22          **THE COURT:** Yes, because we won't be able to  
23 transcribe what you're saying, even if I figure out what you're  
24 saying. So why don't you try that.

25          **MR. FREEMAN:** I'm so sorry about this.

1           **THE COURT:**   Okay.

2           **MR. FREEMAN:**   Give me just one second.   Thank you.

3           **(Judge/Clerk confer)**

4           **(Pause)**

5           **MR. FREEMAN:**   Hello, your Honor?

6           **THE COURT:**   Yes.

7           **MR. FREEMAN:**   Is this better?

8           **THE COURT:**   Much better.   Is that Mr. Freeman?

9           **MR. FREEMAN:**   This is Mr. Freeman.

10          **THE COURT:**   Okay.

11          **MR. FREEMAN:**   I'm in Ms. Westfall's office, I've  
12   kicked her of her phone.

13          **THE COURT:**   Okay.   Well, we can --

14          **MR. FREEMAN:**   I appreciate your understanding.   Thank  
15   you so much.

16          **THE COURT:**   All right.   Well let's proceed.

17          **MR. FREEMAN:**   Thank you, your Honor.   Your Honor, the  
18   legislator's motion to quash is mere window dressing on a  
19   motion for reconsideration.   This Court's adopted a five-factor  
20   balancing test to address the qualified nature of any state  
21   legislative privilege.   And the procedural vehicle through  
22   which the United States seeks discovery is not relevant to any  
23   of those factors.   Specifically, factor five addresses any  
24   chain (phonetic) effect on legislative business that might  
25   result in disclosure of legislative deliberations; not the time

1 needed to gather documents or the desire to withhold campaign  
2 materials. The legislators have provided no valid reason for  
3 this Court to adjust the sensitive balance that has been  
4 described. The subpoenas seek a range of materials that are  
5 relevant to both intent and (indiscernible) claim that the  
6 United States has brought under Section 2 of the *Voting Rights*  
7 *Act*. Documents gathered in *Texas v. Holder* cannot set the  
8 (indiscernible) of discoverable materials in this case, as  
9 discovery in *Texas v. Holder* is limited by time, a streamlined  
10 legal standard, a shifted burden of proof, and an inability on  
11 behalf of the United States to expect the State of Texas to  
12 search for responsive documents due to a different balance  
13 applied to a state legislative privilege in that case. Nor  
14 would production of responsive documents imposing undue burden  
15 on the legislators. The legislators merely suggest that any  
16 effort to gather documents is incompatible with their status as  
17 state officials. This Court has rejected similar absolute  
18 privilege claims in the past, and the legislators have provided  
19 no valid basis for the Court to revisit that decision here.

20 Therefore, this Court should order the legislators to  
21 comply with the subpoenas and produce responsive documents  
22 under seal within seven days. The legislators had a  
23 substantial amount of notice regarding the subpoenas, and they  
24 should likely have knowledge of where those materials are, as  
25 well as the ability to search for the email, private emails,

1 that have not yet been produced electronically.

2 With regard to those legislative -- that the State of  
3 Texas claims are not relevant to the claims in this case,  
4 Representative Aliseda, for example, was the key witness in the  
5 *Texas v. Holder* preclearance proceeding.

6 **THE COURT:** Documents weren't requested from him, but  
7 he appeared as a witness?

8 **MR. FREEMAN:** Documents were requested, your Honor  
9 (indiscernible) --

10 **THE COURT:** I thought the State's argument was that  
11 these were extra legislators whose -- there was no discovery  
12 directed at them in the D. C. case. Is that not correct?

13 **MR. FREEMAN:** It's my -- I'm sorry for interrupting.  
14 It's my understanding that we did ask for documents from  
15 Representative Aliseda. And the purpose of these subpoenas is  
16 simply to seek any additional documents that the legislator  
17 might have that were not previously produced. If there are no  
18 further documents, there's no need to quash a subpoena. The  
19 legislator need simply state that they have no further  
20 documents. And the same is true with the other legislators  
21 that counsel for the legislators claims have had nothing to do  
22 with any photographic voter identification bill. If they have  
23 no documents, there's no need to quash the subpoena. They can  
24 merely comply with the subpoena by providing an explanation of  
25 what they do or do not have. What this -- what the legislators

1 are asking for rather, is a blanket order saying that they are  
2 immune from discovery in this case, and they have provided no  
3 basis under Rule 45 or under the five-factor framework that  
4 this Court has laid out with regard state legislative privilege  
5 to deny all discovery from them.

6 **THE COURT:** Well, tell me how our immigration-related  
7 documents relevant in this case?

8 **MR. FREEMAN:** Your Honor, there are two reasons for  
9 that. First, under Section 2, whether or not there are racial  
10 campaign appeals, both explicit and subtle, is relevant to  
11 whether or not a voting procedure interacting with the totality  
12 of the circumstances to deny or bridge the right to vote on  
13 account of race. Specifically with regard to this bill, many  
14 legislators suggested that photographic voter ID was somehow an  
15 immigration-related law; notwithstanding the fact that several  
16 forms of identification are required to vote under the bill are  
17 easily attainable by a non-citizen. And so the United States  
18 has suggested, and will advance evidence at trial, that this  
19 was a form of a (indiscernible) racial appeal stating that it  
20 would prevent certain types of people from voting. And that's  
21 why the immigration-related appeals tie into the way the  
22 legislators presented the bill to vote -- to each other, to  
23 constituents. And so we think that immigration-related  
24 documents are key to understanding all underlying attempts  
25 behind SB 14.

1           **THE COURT:** All right. Mr. Rosenberg, are you going  
2 to say anything? They're on mute maybe, Brandy?

3           **THE CLERK:** Your Honor, they're -- you should be able  
4 -- Mr. Rosenberg?

5           **MR. ROSENBERG:** Sorry. I had followed Mr. Dunn's  
6 suggestion --

7           **THE COURT:** Yes.

8           **MR. ROSENBERG:** -- and put myself on mute.

9           **THE COURT:** I thought so.

10          **MR. ROSENBERG:** But thank you, and I'll be very  
11 brief. We fully support DOJ's opposition. Just to add a  
12 couple of points in response to your Honor's question. Several  
13 of these legislators were heavily involved in SB 14, not just  
14 Representative Aliseda, but Senator Tommy Williams (phonetic)  
15 and Representative Harless, Senator Patrick. Also --

16          **THE COURT:** Well, I guess the representation by the  
17 state, I thought in reading the briefing and hearing their  
18 argument, was right now that these people, these -- how many  
19 were they? However many other legislators were not --  
20 discovery was not requested from them in the D. C. case. So  
21 here -- I'm getting I guess conflicting messages, because the -  
22 - what the Plaintiffs seem to be saying, yes, they were part of  
23 that case, yes, we did seek documents from them. Is that  
24 correct?

25          **MR. ROSENBERG:** Four of them at least: Aliseda,



1 Williams, Harless, and Dan Patrick. And actually, I think the  
2 state does concede that. But at least those four.

3 **MR. FREEMAN:** Your Honor, this is Dan Freeman. If I  
4 can just provide a little bit more information. The United  
5 States, during the preclearance proceedings, provided an  
6 extensive list of legislators concerning whom it sought  
7 documents. It is my understanding that most of the legislators  
8 to whom we've issued subpoenas were on that list as well. The  
9 state's concern, if I understand it correctly, is that this is  
10 seeking additional information from those same legislators; not  
11 that we expanded the universe of --

12 **THE COURT:** Okay.

13 **MR. FREEMAN:** -- legislators from --

14 **THE COURT:** All right.

15 **MR. FREEMAN:** (Indiscernible)

16 **MR. D'ANDREA:** Your Honor, this is Arthur D'Andrea.  
17 May I -- I've already tracked down the answer to this, and I  
18 think --

19 **THE COURT:** Okay.

20 **MR. D'ANDREA:** -- not quite what we're saying. But  
21 if I may, there are 13 legislators listed on the subpoena.  
22 Four of them participated in the last lawsuit. Those are:  
23 Tommy Williams, Harless, Dennis Bonnen, and Dan Patrick. We  
24 turned over all of those documents. And so with respect to  
25 those four legislators, the current subpoena is only asking for

1 documents that were produced after the stuff we turned over in  
2 the preclearance lawsuit.

3 **THE COURT:** So that's what you're objecting regarding  
4 those four?

5 **MR. D'ANDREA:** That's a tiny objection. Our chief  
6 objection is there are nine legislators who are: Brandon  
7 Creighton, Glenn Hegar, Greg Bonnen, Joe Crab, Larry Taylor,  
8 Mike Jackson, Robert Hall, and Todd Hunter, who were never  
9 involved in the prior lawsuit, who DOJ never sought to get  
10 documents from. And as I said, a lot of them retired before SB  
11 14, one of them wasn't around yet. And those are -- our  
12 principal objection is there's no reason to go after all of  
13 those legislators when they had everything they wanted before.  
14 And -- but on that, there's also -- because they had everything  
15 up to SB 14 from the preclearance lawsuit, there's no reason to  
16 ask Harless (indiscernible) to go back and search her office  
17 for things that are voter ID-related after SB 14 passed. And  
18 that is both because on the second factor, I would say the DOJ  
19 has access to all the important documents they need. And on  
20 the fifth factor, I think it really matters -- there's a big  
21 difference between telling a legislator, "You are going to be  
22 subject to discovery for a law under challenge" and telling a  
23 legislator, "You will be subject to discovery in perpetuity,  
24 even after the law passed, for other things you may do in the  
25 future."

1           **MR. FREEMAN:** Your Honor, if I may respond. I would  
2 be happy to provide the Court with a list of all those  
3 legislators from whom we have previously obtained discovery.  
4 And with regard to the scope of materials that are sought, the  
5 legal standard under Section 2 is far more curative (phonetic)  
6 than the legal standard under Section 5.

7           **THE COURT:** Well, I mean, I don't necessarily agree  
8 that just because things weren't discovered or asked for in the  
9 D. C. case -- this is a different case. I mean, this is -- I  
10 don't agree with the state's argument on that issue. Well, if  
11 you didn't request it then, why do you need it now? But  
12 anyway, so go ahead.

13           **MR. FREEMAN:** And with regard to those prior  
14 legislators, each of those prior legislators supported  
15 predecessor ID bills. And it was clear that there was a  
16 process throughout several sessions in which the state -- in  
17 which legislators promoted a series of bills that became  
18 stricter and stricter and had fewer and fewer opportunities for  
19 voters to be able to pass a ballot, and so the intent to carry  
20 over between their session. So to say that a legislator who  
21 wasn't around in 2014 could have no understanding of what the  
22 ultimate voter ID bill was doesn't take into account the fact  
23 that there was a bill that almost passed in a prior session,  
24 and that legislators resorted to an extraordinary procedure to  
25 prevent that. Two years before that, there was a bill that

1 almost passed that was filibustered. And so this is not simply  
2 restricted to legislative proceedings in 2011.

3 **THE COURT:** Okay. Mr. Rosenberg, I cut you off. Do  
4 you want --

5 **MR. ROSENBERG:** Thank you very much. And I'll just  
6 make a couple more points. One, in terms of whether or not all  
7 documents Mr. D'Andrea has represented have been produced for  
8 these -- from these legislators, we don't know that's the case.  
9 As the Department of Justice has (indiscernible) in its brief,  
10 there is evidence that many of these legislators used their  
11 personal email accounts for official business. And I'm not  
12 sure if Mr. D'Andrea is representing that those documents have  
13 been turned over. I have a feeling --

14 **THE COURT:** Okay. Well, let's ask him. What's your  
15 position, Mr. D'Andrea?

16 **MR. D'ANDREA:** I don't believe the DOJ asked for  
17 personal emails in the prior lawsuit. Usually --

18 **THE COURT:** Well, I think the problem is if they  
19 requested certain information and it's in the personal email, I  
20 mean, they should have access to that.

21 **MR. D'ANDREA:** We respond -- I don't know what they  
22 asked for, so I can't really tell whether it's in there or not.  
23 I don't think their --

24 **THE COURT:** Well, then how do you want me to help you  
25 then? If you all don't even know, how can I figure it out?

1           **MR. D'ANDREA:** We responded to -- I can -- I will  
2 find out. We responded in preclearance. We gave them  
3 everything they asked for. So --

4           **THE COURT:** But they're saying there may be a  
5 question --

6           **MR. D'ANDREA:** (Indiscernible)

7           **THE COURT:** -- regarding whether there was  
8 information in personal emails that was relevant. Is that the  
9 issue, Mr. Rosenberg?

10          **MR. ROSENBERG:** That's correct.

11          **MR. D'ANDREA:** If they asked for that, we gave it to  
12 them. I don't know that they have. But I don't think this --  
13 DOJ assumed this notion that just because they don't have  
14 anything, it must be the legislators were using personal email.  
15 And I think the better assumption is that a lot of these people  
16 are people --

17          **THE COURT:** Well, I thought there was something in  
18 the briefing that there was some testimony that there was some  
19 --

20          **MR. D'ANDREA:** Your Honor --

21          **THE COURT:** -- personal emails being used --

22          **MR. D'ANDREA:** -- Representative Harless testified  
23 that -- her chief of staff testified that she sometimes uses  
24 personal email. But that is one of dozens of legislators  
25 they're going after.

1           **MR. FREEMAN:** Your Honor, this is Dan Freeman, and I  
2 think I can probably clear up a couple of these issues. First  
3 off, we negotiated search terms with (indiscernible) during the  
4 preclearance proceedings based on searches that we conducted in  
5 Microsoft Outlook. That was our understanding, that that was  
6 the legislators' official email, and we provided a string of  
7 search terms that would interact with the search syntax with  
8 Microsoft Outlook, and we were (indiscernible) that they would  
9 search their official email. The State of Texas then provided  
10 those search terms to legislators, I believe, with instruction  
11 to search their official email. And I do not believe, although  
12 I cannot say for certain, that they did not do -- that they  
13 instructed the legislators to search their private email as  
14 well. However, during depositions, the chief of staff to  
15 Representative Harless, who's the House sponsor of SB 14,  
16 testified that she primarily uses her private email. And the  
17 chief of staff to Senator Fraser, who is the Senate sponsor of  
18 SB 14, testified that he uses his private email for legislative  
19 business. And to the extent that legislators candid  
20 communications are contained within those email accounts, those  
21 are highly probative documents that we would -- that we seek  
22 through these subpoenas. To the extent that there are other  
23 documents that have already been turned over, they're outside  
24 the scope of this subpoena. The subpoena is only asking for  
25 those documents that have not already been turned over.

1           **THE COURT:** All right. And Mr. Rosenberg, I cut you  
2 off again, and everybody jumped in.

3           **MR. ROSENBERG:** That's fine, your Honor. I guess  
4 just the last point is Mr. D'Andrea seems to have conceded the  
5 campaign communications are not really subject to the qualified  
6 legislative privilege as he said that many of them -- many of  
7 those communications were made before the legislators even took  
8 the oath of office. So that isn't even implicated by any  
9 privilege issue. And other than that, I think that Mr. Freeman  
10 has covered all the points we wanted to make. Thank you, your  
11 Honor.

12           **THE COURT:** All right. Mr. Doggett, anything?

13           **MR. DOGGETT:** No, your Honor. Thank you.

14           **THE COURT:** Okay. Mr. Haygood?

15           **MR. HAYGOOD:** Yes, your Honor, thank you. I just  
16 want to address one point that you raised earlier about the  
17 reality of the scope of discovery of Section 5, soon to be the  
18 --

19           **THE COURT:** Yeah, hold on because you're not coming  
20 in very well.

21           **MR. HAYGOOD:** Is this better?

22           **THE COURT:** You're echoing very much, too.

23           **MR. HAYGOOD:** Oh.

24           **THE COURT:** Try --

25           **MR. HAYGOOD:** Can you hear me better now?

1           **THE COURT:** No.

2           **MR. HAYGOOD:** (Indiscernible) but I will. Is it  
3 better now?

4           **THE COURT:** No, it's worse.

5           **MR. HAYGOOD:** Okay. How about now?

6           **THE COURT:** That's still catching an echo. Maybe if  
7 you just talk slowly, we might be able to work through that.  
8 Go ahead.

9           **MR. HAYGOOD:** Okay. No, I just was stating, your  
10 Honor, that I would underline a point you made earlier about  
11 how the scope of discovery under Section 5 (indiscernible)  
12 should not be the standard.

13           **THE COURT:** No, I'm sorry. The recorder can't take  
14 you.

15           **MR. HAYGOOD:** (Indiscernible) I have nothing further.

16           **THE COURT:** Go ahead and try --

17           **MR. HAYGOOD:** Is it still difficult to hear me?

18           **THE COURT:** It's a little bit better. It sounds --  
19 there's an echo, but we can at least hear you. Try that. I  
20 don't know what you did.

21           **MR. HAYGOOD:** I'm not sure either. I -- your Honor,  
22 I was just making a quick point that you made earlier actually,  
23 which is that the scope of the discovery in the Section 5 case  
24 should be the standard by which we set the scope of discovery  
25 in this case. Standards are different. Here the burden is on



1 us.

2 **THE COURT:** Okay.

3 **MR. HAYGOOD:** There is evidence we seek --

4 **THE COURT:** Yeah, we -- I can figure out what you're  
5 saying. The problem is there's not going to be a record  
6 because the --

7 **MR. HAYGOOD:** Fair enough --

8 **THE COURT:** -- recorder can't --

9 **MR. HAYGOOD:** Okay.

10 **THE COURT:** -- take it.

11 **MR. HAYGOOD:** That was the (indiscernible) point that  
12 I wanted to make, your Honor.

13 **THE COURT:** Okay. It sounds to me what you said was  
14 just my comment earlier about we're not confined to the  
15 discovery that was done in the D. C. case, the Section 5 case,  
16 correct? Was that what you said?

17 **MR. HAYGOOD:** That's correct, your Honor.

18 **THE COURT:** All right. I'm going to move on.  
19 Mr. Rios?

20 **MR. RIOS:** No comment further, your Honor. We just  
21 support the position of the government.

22 **THE COURT:** Okay. Mr. Clay -- I'm sorry,  
23 Mr. D'Andrea?

24 **MR. D'ANDREA:** Yes, your Honor. I just want to say  
25 that we're not -- our argument is not simplistically the

1 discovery in this case is limited to the last case. DOJ is  
2 seeking discovery on all fronts that it didn't seek before.  
3 Our point is, there is no justification to subpoena Greg  
4 Bonnen, who was a freshman in 2013. And to go down the list in  
5 the subpoena, you get that answer over and over again. So the  
6 DOJ has sort of made this a case about personal emails of  
7 Representative Harless, but there are pending in courts all  
8 around the state dozens of requests to subpoena documents from  
9 legislators who have nothing to do with voter ID. And so to  
10 the extent it's relevant what happened in the preclearance is  
11 only to say the second factor of this Court's balancing test is  
12 can they get the documents elsewhere, and do they have access  
13 to other evidence? And they do. They have access to all the  
14 important evidence that they could possibly need.

15 **THE COURT:** Okay.

16 **MR. D'ANDREA:** Thank you.

17 **THE COURT:** So you're saying that they have nothing  
18 to do with the Senate Bill 7, then you -- I'm sorry. I'm going  
19 back to my criminal days in state court, Senate Bill 7. With  
20 SB 14, you're saying those legislators, some of those had  
21 nothing to do with that, so then you wouldn't -- they wouldn't  
22 have any documents; is that what your position is?

23 **MR. D'ANDREA:** Well, certainly they wouldn't. Joe  
24 Crab, for instance, retired in 2007 --

25 **THE COURT:** Wouldn't -- is that your answer, though,

1 would not -- they would not --

2 **MR. D'ANDREA:** (Indiscernible)

3 **THE COURT:** -- have SB 14 information?

4 **MR. D'ANDREA:** (Indiscernible) Joe Crab and his wife  
5 spent their entire (indiscernible)

6 **THE COURT:** Wait, wait, wait, I'm sorry. I didn't  
7 hear. Was that a yes or a no.

8 **MR. D'ANDREA:** Yes, it is (indiscernible)

9 **THE COURT:** Yes, they would -- they do have SB 14  
10 information?

11 **MR. D'ANDREA:** No. They don't have SB 14 --

12 **THE COURT:** Okay. Then why are we even bothering  
13 with this?

14 **MR. D'ANDREA:** So they still have to search  
15 (indiscernible) Joe Crab retired in 2007, four years before SB  
16 14 passed. But he was still served with the DOJ subpoena that  
17 asked him about immigration documents.

18 **THE COURT:** Well, I'm not talking about immigration  
19 right now. I'm just talking about SB 14. It sounds like --

20 **MR. D'ANDREA:** Just SB 14, he has nothing. But if  
21 it's voter ID-related stuff, he does, because there was other  
22 voter ID proposals back in -- I think it was '03 --

23 **THE COURT:** Okay, I see.

24 **MR. D'ANDREA:** -- or '05 he was involved. So he  
25 still has to search for those. But if it's just SB 14, then

1 that solves the problem for him.

2 **THE COURT:** Okay, I see. Okay. Anything else from  
3 anyone?

4 **MR. ROSENBERG:** Just quickly. This is Ezra Rosenberg  
5 again. On that last point, as we said in the brief, as the  
6 legislative record shows, photo ID legislation throughout the  
7 legislative session leading up to SB 14 became increasingly  
8 restrictive, and that evidence is going to be very, very  
9 important in this case dealing with the intent behind SB 14  
10 itself.

11 **THE COURT:** Okay. And Mr. Dunn, I think I left --

12 **MR. ROSENBERG:** (Indiscernible) Arlington Heights  
13 talks in terms of the complete legislative or administrative  
14 history and the historical background of the legislative  
15 decisions would be relevant to the determination of  
16 discriminatory purpose.

17 **THE COURT:** Okay. And I think I left Mr. Dunn out.

18 **MR. DUNN:** Thank you, Judge. Nothing more to add.

19 **THE COURT:** Okay. Let's see. I'm not convinced that  
20 immigration-related documents should be produced here. So the  
21 Court's going to grant the motion to quash as to that category  
22 of documents. And then -- so then is the issue regarding --  
23 because I'm getting some conflicting information here. Pre-  
24 enactment documents and post-enactment documents of SB 14 --

25 **MR. D'ANDREA:** Yes, your Honor. That's the remaining

1 issue. Pre-enactment, post-enactments, and campaign offices.

2 **THE COURT:** Well, and campaign offices, I mean,  
3 that's not going to be covered by the legislative privilege,  
4 correct?

5 **MR. D'ANDREA:** Correct. I don't think in most cases  
6 it will be, but I -- and certainly if they haven't been sworn  
7 in yet. But I do think that it's just -- it's both unduly  
8 burdensome and approaching irrelevant to ask for campaign  
9 fliers and campaign commercials that they were in.

10 **MR. FREEMAN:** And, your Honor, if I could just speak  
11 to that. It is directly relevant to one of the tenant factors  
12 under Section 2 whether or not there were racial campaign  
13 appeals (indiscernible) subtle, and so we would strongly oppose  
14 any suggestion that those documents would be irrelevant or that  
15 they could be considered even marginally relevant (phonetic)  
16 under the undue burden framework of the Fifth Circuit.

17 **THE COURT:** And what is it you're looking for from  
18 these campaign offices? I mean, anything regarding Senate Bill  
19 14, or what's your -- voter ID? What is it you've requested?

20 **MR. FREEMAN:** I'm finding that right now, your Honor.  
21 Your Honor, we specifically asked for all documents related to  
22 campaign communications including but not limited to mailings,  
23 ads, websites, fliers, correspondence related to voter  
24 identification requirements or SB 14. And then we also asked  
25 for all documents related to campaign communication, including

1 but not limited to those same categories related to  
2 immigration.

3 **THE COURT:** Okay. I've already made my ruling on  
4 immigration. Anything else from anybody?

5 **MR. DUNN:** (Indiscernible)

6 **THE COURT:** Yes, but we can barely hear you.

7 **MR. DUNN:** Is that better?

8 **THE COURT:** Yes.

9 **MR. DUNN:** On the campaign-related issue, in the  
10 redistricting case that was tried, a number of exhibits came  
11 about of advertisements for candidates. And for example there  
12 was a state House race in Tarrant County where a democratic  
13 nominee who was Anglo was colored in darker skin and his teeth  
14 were separated to make it look African American and placed in  
15 ads with President Obama and others. And these types of racial  
16 appeals, especially involving members of the legislator that  
17 highly support Senate Bill 14, often accompanied communications  
18 about voter ID and why we need it. So that's why those issues  
19 seem so relevant to us in the case.

20 **MR. RIOS:** Your Honor, this is Rolando Rios. May I  
21 add something, your Honor?

22 **THE COURT:** Yes.

23 **MR. RIOS:** We've been involved in a lot of Section 2  
24 cases. There are direct campaigns that when somebody's running  
25 for office use keywords that send a message. For example, so-

1 and-so will fight to make sure that no illegal voters -- or no  
2 immigrants voted in the election, or we'll keep the elections  
3 clear, make sure there's no voter fraud. There's certain  
4 keywords that are used that an expert can look at and say,  
5 these type of words are used to appeal to a person's race, and  
6 that sends a message. And that's usually what's used and  
7 creates the effect of racial (indiscernible) it's a very  
8 significant factor in most Section 2 cases that racial appeals  
9 are made through campaigns and that's how messages are  
10 communicated. So I would strongly support the position of the  
11 United States on this.

12 **THE COURT:** Okay. I've already stated that  
13 immigration-related documents I do not find to be relevant. I  
14 do think the pre-enactment and post-enactment documents are  
15 relevant. In looking at the balancing factors, the Court finds  
16 they should be produced under the same order the Court  
17 previously provided regarding the protective order -- should be  
18 produced in that fashion. So what's left? The campaign office  
19 material?

20 **MR. D'ANDREA:** Yes, your Honor.

21 **MR. FREEMAN:** And, your Honor, to be specific, the  
22 only remaining topic concerning campaigns is communication  
23 related to voter identification requirements, or SB 14.

24 **THE COURT:** Right.

25 **MR. RIOS:** And, your Honor, my comment -- this is

1 Mr. Rios. And my comment when I mentioned the word  
2 "immigration," wasn't directed at seeking the Court to  
3 reconsider the issue on immigration. It was a comment directed  
4 at seeking production of the campaign materials. The word  
5 "immigration" is just a word -- keyword that they use in the  
6 campaign. That's all I was saying, your Honor.

7 **MR. D'ANDREA:** Your Honor, the campaign stuff is  
8 personal business, and they're forbidden by state law to even  
9 mingle this with their official state business. And we would  
10 have to go through an entirely separate channel to even get to  
11 stuff like that. And it -- I don't see it's relevant to this.  
12 And to the extent that they have this sort of stuff that goes  
13 out in public and they get -- they have access to it from other  
14 sources, right, which is the second element. Is there another  
15 way to get this? Well, yes. You can go to newspapers, you  
16 have stuff online (indiscernible) internet still available. I  
17 don't see why they have to go through the campaign offices to  
18 get it.

19 **THE COURT:** Yeah.

20 **MR. FREEMAN:** Your Honor, there may be internal  
21 campaign communications, there may be mailings that were only  
22 sent to particular voters that are not publically available.  
23 There are all sorts of materials that are not available to the  
24 United States with regard to campaign communication that may  
25 explain, you know, to a legislator's particular constituency



1 why that legislator supported SB 14. And in the world of  
2 targeted communication, we may see a very different message  
3 marched in front of some voters than one a legislator  
4 (indiscernible) more broadly to the public.

5 **THE COURT:** Okay. I'm having a little more problem  
6 on the campaign office information. But let me look at that  
7 further and then probably by early next week I'll let you know  
8 my ruling on it.

9 **MR. D'ANDREA:** Your Honor, may we file -- this is  
10 Arthur D'Andrea, I'm sorry. May we file a brief, an advisory,  
11 discussing the campaign issue further?

12 **THE COURT:** That's fine. When can you get that on  
13 file?

14 **MR. D'ANDREA:** Do it -- can we do it tomorrow?

15 **THE COURT:** Okay. And I suspect the Plaintiffs are  
16 going to want to file something. Mr. Freeman?

17 **MR. FREEMAN:** Most likely, your Honor.

18 **THE COURT:** I'm sorry?

19 **MR. FREEMAN:** Most likely, your Honor.

20 **THE COURT:** Okay. So by Tuesday? Actually, the  
21 Court's kind of going to be tied up late next week, so  
22 Mr. D'Andrea, if you want to file something by Monday and the  
23 Plaintiffs by Thursday, probably be early the next week when I  
24 get to it.

25 **MR. D'ANDREA:** That's fine, your Honor, thank you.

1           **THE COURT:** Okay. Was there anything else left to  
2 address on this motion to quash?

3           **MR. FREEMAN:** Your Honor, with regard to those  
4 materials that your Honor has ordered produced, the United  
5 States would appreciate a date certain by which those materials  
6 should be produced as we will likely want to use those  
7 materials in future depositions that we (indiscernible)

8           **THE COURT:** Mister --

9           **MR. FREEMAN:** -- before the end of discovery.

10          **THE COURT:** Mr. D'Andrea, any timeframe?

11          **MR. D'ANDREA:** Your Honor, seven -- they asked seven  
12 days earlier. That's entirely too quick.

13          **THE COURT:** What are you looking at?

14          **MR. D'ANDREA:** They just got a 30-day extension on  
15 something we asked for in December. I can -- I have some other  
16 colleagues on the phone who might be able to speak to that  
17 better.

18          **THE COURT:** Okay.

19          **MR. D'ANDREA:** Kevin -- Mr. Hays (phonetic), would  
20 you like to talk about it?

21          **MR. HAYS:** Your Honor, this is Kevin Hays with the  
22 State of Texas. It's probably going to take us a few days to  
23 get the documents in a proper configuration the DOJ has  
24 requested and that we agreed to in the agreement concerning  
25 production of electronic information. If we could have at

1 least two weeks, it would really help the --

2 **THE COURT:** That's fine. I don't have a problem with  
3 two weeks. So 14 days?

4 **MR. HAYS:** Yes, your Honor.

5 **THE COURT:** Okay. What else on this motion to quash?  
6 What about -- there was a judicial notice request filed. Is  
7 there anything that needs to be done on that? Sound like it  
8 was partly agreed to but not to the summaries. I'm just not  
9 sure. Is there anything the Court needs to do on that?

10 **MR. FREEMAN:** This is Dan Freeman on behalf of the  
11 United States, your Honor. There is a slight disagreement with  
12 regard to the summary of documents with a cover. It's my  
13 understanding that Texas not disagree with regard to the Court  
14 taking judicial notice of the underlying exhibits. The United  
15 States would request that this Court in direct order make a  
16 judicial note of both of the summaries and of the exhibits.  
17 It's the United States' position that those summaries will make  
18 the information much more useful to the Court and there's --

19 **THE COURT:** Well, I meant --

20 **MR. FREEMAN:** -- no reason that the Court can't --

21 **THE COURT:** Yeah.

22 **MR. FREEMAN:** -- take judicial notice of them.

23 **THE COURT:** It's not right, but I just thought if we  
24 could finalize it today, we would. But I'm assuming then the  
25 State is going to want to file something on that, mister --

1           **MR. CLAY:** Your Honor, this is Reed Clay for the  
2 State of Texas. I don't necessarily think that we need to file  
3 something.

4           **THE COURT:** Okay.

5           **MR. CLAY:** I think the documents -- the underlying  
6 reports from the Census Bureau are something the Court can  
7 certainly take judicial notice of.

8           **THE COURT:** Right, and I will. But I thought there  
9 was an issue on some summaries maybe that --

10          **MR. CLAY:** Yeah. I don't think that summary  
11 documents quite -- is not something the Court can take judicial  
12 notice of, and so to the extent that the order is just taking  
13 judicial notice of the reports, we have no problem --

14          **THE COURT:** That's granted. Okay, so I will grant  
15 that. So what's the government's position on the summaries  
16 then? They're urging that for the Court to rule on that also?

17          **MR. FREEMAN:** Yes, your Honor. The summary documents  
18 simply make it much easier for the Court to --

19          **THE COURT:** Right. But it's not about what's easier.

20          **MR. FREEMAN:** Okay.

21          **THE COURT:** This is not about what's easier. It's  
22 what about the Court's -- what the Court can take judicial  
23 notice of.

24          **MR. FREEMAN:** Yes, your Honor. And the courts in  
25 both *Texas v. United States* and *Texas v. Holder*, a preclearance

1 action in the District Court for the District of Columbia  
2 concerning redistricting and voter ID respectively, both  
3 granted judicial notice of nearly identical documents --

4 **THE COURT:** The summaries? Specifically the  
5 summaries?

6 **MR. FREEMAN:** As well, yes, your Honor.

7 **THE COURT:** Okay. Mr. Clay, anything on that?

8 **MR. CLAY:** Well, we want to file something to address  
9 that. We just don't think that's the type of thing that a  
10 Court can take judicial notice of. So if that's still on the  
11 table, then we'll have to file an objection within the  
12 timeframe.

13 **THE COURT:** Okay. It sounds like it's still on the  
14 table, so that's what I was trying to figure out. So that's  
15 still pending. Now, on the Defendants' motion to compel, I  
16 think you all resolved the issues there that we addressed last  
17 time; is that correct? You all were going to -- I thought we  
18 had set that for hearing and then Brandy said that you all had  
19 come to an agreement on the remaining issues.

20 **MR. CLAY:** Your Honor, this is Reed Clay for the  
21 State of Texas. I think that we had pushed out a deadline for  
22 DOJ to respond and to continue to look for some documents, so I  
23 think that technically the motion hasn't been completely  
24 decided because we have yet to reach the end of those 30 days  
25 to see what the government --

1           **THE COURT:** Okay. That's fine.

2           **MR. CLAY:** -- may come up with.

3           **THE COURT:** I was just seeing what we could finalize  
4 and clean out. So that's still pending then. Is there  
5 anything else to address from the Plaintiffs?

6           **MR. FREEMAN:** Not from the United States, your Honor.

7           **THE COURT:** Okay. The defense?

8           **MR. FREEMAN:** Not from the third party legislators,  
9 your Honor, thank you.

10           **THE COURT:** Okay. So the only issue right now is the  
11 campaign material issue, and I'm going to await a briefing on  
12 that. And if nothing else, you can be excused.

13           **(All attorneys affirm thank you)**

14           **THE COURT:** Thank you.

15           **(This proceeding was adjourned at 4:41 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

May 5, 2014

TONI HUDSON, TRANSCRIBER